

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT  
3301 Gun Club Road  
West Palm Beach, Florida 33406**

**IN THE MATTER OF:**

**Order No. 2001-04 DAO-WS**

Declaration of Phase II Water Shortage Restrictions for the South Dade Water Use Basin, Water Conservation Area/Everglades National Park Water Use Basin, Water Conservation Area 3 Water Use Basin, Water Conservation Area 2 Water Use Basin, Water Conservation Area 1 / C-51 Water Use Basin, M Canal Water Use Basin, C-18 Water Use Basin, Loxahatchee River Water Use Basin, North Palm Beach County Water Use Basin, and the Interior Palm Beach County Water Use Basin (Lower East Coast Region)

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**DECLARATION OF PHASE II WATER SHORTAGE RESTRICTIONS FOR THE SOUTH DADE WATER USE BASIN, WATER CONSERVATION AREA/EVERGLADES NATIONAL PARK WATER USE BASIN, WATER CONSERVATION AREA 3 WATER USE BASIN, WATER CONSERVATION AREA 2 WATER USE BASIN, WATER CONSERVATION AREA 1 / C-51 WATER USE BASIN, M CANAL WATER USE BASIN, C-18 WATER USE BASIN, LOXAHATCHEE RIVER WATER USE BASIN, NORTH PALM BEACH COUNTY WATER USE BASIN, AND THE INTERIOR PALM BEACH COUNTY WATER USE BASIN.**

The Governing Board of the of the South Florida Water Management District, (hereinafter "District") after considering recommendations of District staff and being otherwise fully apprised of the matter, issues this Order pursuant to Rule 40E-21.231, Florida Administrative Code, based on the following Findings of Fact and Ultimate Facts and Conclusions of Law.

## **FINDINGS OF FACT**

1. The water sources subject to this Order are groundwater of the Biscayne Aquifer, Lake Okeechobee and the surface waters connected to Lake Okeechobee. This Order applies to all use classes within the stated basins.
2. The boundaries of the area of concern encompass all water use basins of the Lower East Coast Region as depicted on the attached and incorporated Exhibit A and particularly described as the South Dade Water Use Basin, Water Conservation Area/Everglades Water Use Basin, Water Conservation Area 3 Water Use Basin, Water Conservation Area 2 Water Use Basin, Water Conservation Area 1/C-51 Water Use Basin, M Canal water Use Basin, C-18 Water Use Basin, Loxahatchee River Water Use Basin, North Palm Beach County Water Use Basin, and the Interior Palm Beach County Water Use Basin. These basins are within Monroe, Dade, Broward, and Palm Beach Counties.
3. On November 29, 2000 the Executive Director declared an Emergency Water Shortage, Order #2000-179-DAO-WS, imposing Phase I Water Use Restrictions with the subject sources and areas described in paragraphs 1. and 2. above. The Governing Board issued an Order of Concurrence with this Order on December 14, 2000 (Order #2000-183-DAO-WS). The findings of those Orders are incorporated herein. In accordance with Rule 40E-21.275, F.A.C., 12 variances from Order #2000-179-DAO-WS have been issued and 8 have been denied by District staff, with concurrence by the Governing Board.

4. As discussed below the water resource concerns set forth in Order #2000-179-DAO-WS have intensified for those sources and areas described in paragraphs 1. and 2. above. In addition, the water conservation expected from the Phase I restrictions effective November 29, 2000 have not been realized. Only an average of 1-10% reduction in public water supply use has occurred in the Lower East Coast Region. Phase I restrictions have a 15% reduction target, significantly higher than those achieved to date.

5. The year 2000 was the driest calendar year on record District-wide since 1938. The average District rainfall is about 52 inches. District-wide rainfall for the year 2000 was approximately 39.44 inches below average (76% of average). Rainfall for the year 2000 in the areas that recharge Lake Okeechobee has been 65% of average. Rainfall for the year 2000 on the Lower East Coast Region has been 85% of average.

6. As of January 10, 2001, the level of Lake Okeechobee was 10.96 feet NGVD. This level is approximately 3.75 feet below the long-term average of 14.71 feet. Significantly, the level of Lake Okeechobee is receding at a considerable pace, approximately 0.02-0.04 feet per day. Current projections are for Lake Okeechobee levels to recede below 10.0 feet NGVD during April, 2001. When Lake Okeechobee's elevations fall below 10.0 feet NGVD the District's ability to deliver water supplies to the Lower East Coast Region is significantly impaired.

7. Current conditions indicate ground water levels in the Surficial Aquifer System in the Lower East Coast are below normal in 20 of 21 real time monitor wells. Levels in three-fourths of these wells fall within the lowest 30<sup>th</sup> percentile of historic water levels for this time of year. In addition, these water levels are declining at rapid rates. This

decline is expected to continue at normal to above normal rates during the remainder of the dry season.

8. Water availability in the Water Conservation Areas, which are the primary source of surface water supply and recharge for the Lower East Coast, is below average to average for this time of year. As of January 11, 2001, Water Conservation Area 1 level is 16.14 feet MSL, Water Conservation Area 2 level is at 11.62 feet MSL, and Water Conservation Area 3 level is 9.54 feet MSL. Between late February and early May the Water Conservation Areas are projected to recede below the minimum levels of the regulation schedules, if rainfall conditions are as predicted. At that time, Lake Okeechobee will be the only remaining regional water supply for the Lower East Coast for the rest of the dry season.

9. The Climate Prediction Center is projecting a high probability of below average rainfall from December through March 2001 in both the Lake Okeechobee Service Area and the Lower East Coast. This rainfall is not expected to significantly raise water levels in Lake Okeechobee prior to the end of the dry season. Early dry season rainfall continues to be well below normal across most of the District, and the late dry season is forecast to have an equal probability of above, below, or average rainfall. Preliminary estimated drought return frequencies indicate the District is experiencing up to a 1 in 75 year drought, with the most severe dry conditions being in those areas that provide recharge to Lake Okeechobee.

10. As a result of the above factors, conditions over this dry season are projected to rapidly decline to the extent that sufficient water will not be available to meet the present and anticipated requirements of the water users within the subject area, while protecting

the water resources. The District will continue to monitor the conditions of the water resources and the needs of the water users as required by the Water Shortage Plan (Chapter 40E-21, F.A.C.)

#### **ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW**

11. Section 373.246, Florida Statutes, authorizes the Governing Board to adopt a water shortage plan to regulate the withdrawal and use of water to protect the water resources of the District. Chapter 40E-21, F.A.C., is the water shortage plan adopted by the Governing Board.

12. Sections 373.175 and 373.246, F.S. authorize the Governing Board to declare a water shortage within all or part of the District, where insufficient ground or surface water is available to meet the present and anticipated needs of the users or class or water supply or when conditions are such as to require reduction in total use within the area to protect water resources from serious harm.

13. Section 373.246(3), F.S., authorizes the Governing Board to impose restrictions on one or more classes of water uses as may be necessary to protect the water resources of the District from serious harm and to restore them to their previous condition.

14. Rule 40E-21.275, F.A.C., authorizes the District to issue variances from a water shortage order providing the applicant provides reasonable assurances that the variance will not otherwise be harmful to the water resources of the District.

15. The sources experiencing concern are groundwater of the Biscayne Aquifer, Lake Okeechobee, and the surface waters connected to Lake Okeechobee.

16. The District has monitored the condition of the water resources and the needs of the users as required by Rule 40E-21.221, F.A.C. Water use monitoring data indicates the water conservation expected from the Phase I restrictions issued on November 29, 2000 have not been realized.

17. Based on the above Findings of Fact, including the considerations in Rule 40E-21.221(3), F.A.C., the estimated present and anticipated available water supplies within any source class will be insufficient to meet the estimated present and anticipated demands of the users from the source class and serious harm to the water resources may be expected. Additional action is necessary to equitably distribute Lake Okeechobee supplies for the protection of water resources in the Lower East Coast.

18. The Executive Director of the District and all law enforcement authorities and appropriate city and county officials may enforce the Governing Board's regulations and orders adopted pursuant to its legal authority by administrative action, by suit for injunction, by criminal proceedings, or other appropriate action as authorized by Chapter 373, F.S., and by adoption and enforcement of local government ordinances for such purposes.

### **ORDER**

Based upon the above Findings of Fact, Ultimate Facts and Conclusions of Law, the Governing Board of the District orders that:

1. A water shortage is declared and Phase II Severe Water Shortage Restrictions on all use classes in the Lower East Coast as depicted in the attached Exhibit A are imposed. A copy of the Phase II Severe Water Shortage restrictions in Rule 40E-21.531, F.A.C., is attached as Exhibit B.

2. Information regarding this Order is posted on the District's Internet Web Site at [www.sfwmd.gov](http://www.sfwmd.gov), and will be communicated on a water "user hotline" for persons that do not have access to the internet or have additional questions for District Staff. If these modes of communication are inadequate for any affected water user, the District must be immediately notified.

3. Permitted water users are requested to continue submitting water usage monitoring data in accordance with permit conditions. The Director of the Water Use Department is authorized to request, in writing, those permitted water users whose permit conditions require submittal of water usage monitoring data to provide additional data or data submittals at increased frequencies, as determined appropriate.

4. A user may request relief from a Water shortage Order by filing an application for variance in accordance with Rule 40E-21.275, F.A.C., but must conform to the water use restrictions until the Executive Director grants a temporary variance or the Board grants the variance.

5. Variances previously granted from Order #2000-179-DAO-WS will continue to be effective under this Order. They shall expire upon a declaration by the Governing Board that a water shortage in the affected areas no longer exists, thereby rescinding Water Shortage Order No. 2001-04-DAO-WS, or when a more restrictive water shortage declaration is made in the affected areas (unless otherwise provided in such water shortage declaration).

6. The Governing Board requests that every city and county commission, state and county attorney, sheriff, police officer and other appropriate local government official assist in the implementation and enforcement of this Water Shortage Order. The

District staff will cooperate with the local governments in implementing such enforcement measures.

7. The Phase II Severe Water Restrictions imposed by this Order shall become effective in accordance with Rule 40E-21.291(7), F.A.C. upon publication of Notice in newspapers of general circulation – at 12:01 A.M. on January 17, 2001.

8. This Order may be rescinded or modified by the Governing Board or the Executive Director as conditions warrant.

### **NOTICE OF RIGHTS**

Section 120.569(1), F.S. (1997), requires that “each notice shall inform the recipient of any administrative hearing or judicial review that is available under this section, s. 120.57, or s. 120.68; shall indicate the procedure which must be followed to obtain the hearing or judicial review, and shall state the time limits which apply.” Please note that this Notice of Rights is not intended to provide legal advice. Not all the legal proceedings detailed below may be an applicable or appropriate remedy. You may wish to consult an attorney regarding your legal rights.

#### **Petition for Administrative Proceedings**

1. A person whose substantial interests are affected by the South Florida Water Management District’s (SFWMD) action has the right to request an administrative hearing on that action. The affected person may request either a formal or an informal hearing, as set forth below. A point of entry into administrative proceedings is governed by Rules 28-106.111 and 40E-1.511, F.A.C., (also published as an exception to the Uniform Rules of Procedure as Rule 40E-0.109), as set forth below. Petitions are deemed filed upon receipt of the original documents by the SFWMD Clerk.

a. Formal Administrative Hearing: If a genuine issue(s) of material fact is in dispute, the affected person seeking a formal hearing on a SFWMD decision which does or may determine their substantial interests shall file a petition for hearing pursuant to Sections 120.569 and 120.57(1), F.S. or for mediation pursuant to Section 120.573, F.S. within 21 days, except as provided in subsections c. and d. below, of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Petitions must substantially comply with the requirements of Rule 28-106.201(2), F.A.C., a copy of the which is attached to this Notice of Rights.

b. Informal Administrative Hearing: If there are no issues of material fact in dispute, the affected person seeking an informal hearing on a SFWMD decision which does or may determine their substantial interests shall file a petition for hearing



pursuant to Sections 120.569 and 120.57(2), F.S. or for mediation pursuant to Section 120.573, F.S. within 21 days, except as provided in subsections c. and d. below, of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Petitions must substantially comply with the requirements of Rule 28-106.301(2), F.A.C., a copy of the which is attached to this Notice of Rights.

c. Administrative Complaint and Order: If a Respondent objects to a SFWMD Administrative Complaint and Order, pursuant to Section 373.119, F.S. (1997), the person named in the Administrative Complaint and Order may file a petition for a hearing no later than 14 days after the date such order is served. Petitions must substantially comply with the requirements of either subsection a. or b. above.

d. State Lands Environmental Resource Permit: Pursuant to Section 373.427, F.S., and Rule 40E-1.511(3), F.A.C. (also published as an exception to the Uniform Rules of Procedure as Rule 40E-0.109(2)(c), a petition objecting to the SFWMD's agency action regarding consolidated applications for Environmental Resource Permits and Use of Sovereign Submerged Lands (SLERPs), must be filed within 14 days of the notice of consolidated intent to grant or deny the SLERP. Petitions must substantially comply with the requirements of either subsection a. or b. above.

e. Emergency Authorization and Order: A person whose substantial interests are affected by a SFWMD Emergency Authorization and Order, has a right to file a petition under Sections 120.569, 120.57(1), and 120.57(2), F.S., as provided in subsections a. and b. above. However, the person, or the agent of the person responsible for causing or contributing to the emergency conditions shall take whatever action necessary to cause immediate compliance with the terms of the Emergency Authorization and Order.

f. Order for Emergency Action: A person whose substantial interests are affected by a SFWMD Order for Emergency Action has a right to file a petition pursuant to Rules 28-107.005 and 40E-1.611, F.A.C., copies of which are attached to this Notice of Rights, and Section 373.119(3), F.S., for a hearing on the Order. Any subsequent agency action or proposed agency action to initiate a formal revocation proceeding shall be separately noticed pursuant to section g. below.

g. Permit Suspension, Revocation, Annulment, and Withdrawal: If the SFWMD issues an administrative complaint to suspend, revoke, annul, or withdraw a permit, the permittee may request a hearing to be conducted in accordance with Sections 120.569 and 120.57, F.S., within 21 days of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Petitions must substantially comply with the requirements of Rule 28-107.004(3), F.A.C., a copy of the which is attached to this Notice of Rights.

2. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the SFWMD's final action may be different from the position taken by it previously. Persons whose substantial interests

may be affected by any such final decision of the SFWMD shall have, pursuant to Rule 40E-1.511(2), F.A.C. (also published as an exception to the Uniform Rules of Procedure as Rule 40E-0.109(2)(c), an additional 21 days from the date of receipt of notice of said decision to request an administrative hearing. However, the scope of the administrative hearing shall be limited to the substantial deviation.

3. Pursuant to Rule 40E-1.511(4), F.A.C., substantially affected persons entitled to a hearing pursuant to Section 120.57(1), F.S., may waive their right to such a hearing and request an informal hearing before the Governing Board pursuant to Section 120.57(2), F.S., which may be granted at the option of the Governing Board.

4. Pursuant to Rule 28-106.111(3), F.A.C., persons may file with the SFWMD a request for extension of time for filing a petition. The SFWMD, for good cause shown, may grant the extension. The request for extension must contain a certificate that the petitioner has consulted with all other parties, if any, concerning the extension and that the SFWMD and all other parties agree to the extension.

### **CIRCUIT COURT**

5. Pursuant to Section 373.617, F.S., any substantially affected person who claims that final agency action of the SFWMD relating to permit decisions constitutes an unconstitutional taking of property without just compensation may seek judicial review of the action in circuit court by filing a civil action in the circuit court in the judicial circuit in which the affected property is located within 90 days of the rendering of the SFWMD's final agency action.

6. Pursuant to Section 403.412, F.S., any citizen of Florida may bring an action for injunctive relief against the SFWMD to compel the SFWMD to enforce the laws of Chapter 373, F.S., and Title 40E, F.A.C. The complaining party must file with the SFWMD Clerk a verified complaint setting forth the facts upon which the complaint is based and the manner in which the complaining party is affected. If the SFWMD does not take appropriate action on the complaint within 30 days of receipt, the complaining party may then file a civil suit for injunctive relief in the 15<sup>th</sup> Judicial Circuit in and for Palm Beach County or circuit court in the county where the cause of action allegedly occurred.

7. Pursuant to Section 373.433, F.S., a private citizen of Florida may file suit in circuit court to require the abatement of any stormwater management system, dam, impoundment, reservoir, appurtenant work or works that violate the provisions of Chapter 373, F.S.

### **DISTRICT COURT OF APPEAL**

8. Pursuant to Section 120.68, F.S., a party who is adversely affected by final SFWMD action may seek judicial review of the SFWMD's final decision by filing a notice of appeal pursuant to Florida Rule of Appellate Procedure 9.110 in the Fourth District Court of Appeal or in the appellate district where a party resides and filing a second copy of the notice with the SFWMD Clerk within 30 days of rendering of the final SFWMD action.

## **LAND AND WATER ADJUDICATORY COMMISSION**

9. A party to a “proceeding below” may seek review by the Land and Water Adjudicatory Commission (LAWAC) of SFWMD’s final agency action to determine if such action is consistent with the provisions and purposes of Chapter 373, F.S. Pursuant to Section 373.114, F.S., and Rules 42-2.013 and 42-2.0132, F.A.C., a request for review of (a) an order or rule of the SFWMD must be filed with LAWAC within 20 days after rendition of the order or adoption of the rule sought to be reviewed; (b) an order of the Department of Environmental Protection (DEP) requiring amendment or repeal of a SFWMD rule must be filed with LAWAC within 30 days of rendition of the DEP’s order, and (c) a SFWMD order entered pursuant to a formal administrative hearing under Section 120.57(1), F.S., must be filed no later than 20 days after rendition of the SFWMD’s final order. Simultaneous with filing, a copy of the request for review must be served on the DEP Secretary, any person named in the SFWMD or DEP final order, and all parties to the proceeding below. A copy of Rule 42-2.013, F.A.C. is attached to this Notice of Rights.

## **PRIVATE PROPERTY RIGHTS PROTECTION ACT**

10. A property owner who alleges a specific action of the SFWMD has inordinately burdened an existing use of the real property, or a vested right to a specific use of the real property, may file a claim in the circuit court where the real property is located within 1 year of the SFWMD action pursuant to the procedures set forth in Subsection 70.001(4)(a), F.S.

## **LAND USE AND ENVIRONMENTAL DISPUTE RESOLUTION**

11. A property owner who alleges that a SFWMD development order (as that term is defined in Section 70.51(2)(a), F.S. to include permits) or SFWMD enforcement action is unreasonable, or unfairly burdens the use of the real property, may file a request for relief with the SFWMD within 30 days of receipt of the SFWMD’s order or notice of agency action pursuant to the procedures set forth in Subsections 70.51(4) and (6), F.S.

## **MEDIATION**

12. A person whose substantial interests are, or may be, affected by the SFWMD’s action may choose mediation as an alternative remedy under Section 120.573, F.S. Pursuant to Rule 28-106.111(2), F.A.C., the petition for mediation shall be filed within 21 days of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Choosing mediation will not affect the right to an administrative hearing if mediation does not result in settlement.

Pursuant to Rule 28-106.402, F.A.C., the contents of the petition for mediation shall contain the following information:

- (1) the name, address, and telephone number of the person requesting mediation and that person's representative, if any;
- (2) a statement of the preliminary agency action;
- (3) an explanation of how the person's substantial interests will be affected by the agency determination; and
- (4) a statement of relief sought.

As provided in Section 120.573, F.S. (1997), the timely agreement of all the parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, F.S., for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within 60 days of the execution of the agreement. If mediation results in settlement of the dispute, the SFWMD must enter a final order incorporating the agreement of the parties. Persons whose substantial interest will be affected by such a modified agency decision have a right to petition for hearing within 21 days of receipt of the final order in accordance with the requirements of Sections 120.569 and 120.57, F.S., and SFWMD Rule 28-106.201(2), F.A.C. If mediation terminates without settlement of the dispute, the SFWMD shall notify all parties in writing that the administrative hearing process under Sections 120.569 and 120.57, F.S., remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action.

### **VARIANCES AND WAIVERS**

13. A person who is subject to regulation pursuant to a SFWMD rule and believes the application of that rule will create a substantial hardship or will violate principles of fairness (as those terms are defined in Subsection 120.542(2), F.S.) and can demonstrate that the purpose of the underlying statute will be or has been achieved by other means, may file a petition with the SFWMD Clerk requesting a variance from or waiver of the SFWMD rule. Applying for a variance or waiver does not substitute or extend the time for filing a petition for an administrative hearing or exercising any other right that a person may have concerning the SFWMD's action. Pursuant to Rule 28-104.002(2), F.A.C., the petition must include the following information:

- (a) the caption shall read:  

Petition for (Variance from) or (Waiver of) Rule (Citation)
- (b) The name, address, telephone number and any facsimile number of the petitioner;
- (c) The name, address telephone number and any facsimile number of the attorney or qualified representative of the petitioner, (if any);

- (d) the applicable rule or portion of the rule;
- (e) the citation to the statute the rule is implementing;
- (f) the type of action requested;
- (g) the specific facts that demonstrate a substantial hardship or violation of principles of fairness that would justify a waiver or variance for the petitioner;
- (h) the reason why the variance or the waiver requested would serve the purposes of the underlying statute; and
- (i) a statement of whether the variance or waiver is permanent or temporary. If the variance or waiver is temporary, the petition shall include the dates indicating the duration of the requested variance or waiver.

A person requesting an emergency variance from or waiver of a SFWMD rule must clearly so state in the caption of the petition. In addition to the requirements of Section 120.542(5), F.S. pursuant to Rule 28-104.004(2), F.A.C., the petition must also include:

- a) the specific facts that make the situation an emergency; and
- b) the specific facts to show that the petitioner will suffer immediate adverse effect unless the variance or waiver is issued by the SFWMD more expeditiously than the applicable timeframes set forth in Section 120.542, F.S.

### **WAIVER OF RIGHTS**

14. Failure to observe the relevant time frames prescribed above will constitute a waiver of such right.

### **INITIATION OF PROCEEDINGS (involving disputed issues of material fact) (28-106.201, F.A.C.)**

- (2) All petitions filed under these rules shall contain:
  - (a) The name and address of each agency affected and each agency's file or identification number, if known;
  - (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding, and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
  - (c) A statement of when and how the petitioner received notice of the agency decision;

- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief; and
- (f) A demand for relief.

**INITIATION OF PROCEEDINGS (not involving disputed issues of material fact) (28-106.301, F.A.C.)**

- (2) All petitions filed under these rules shall contain:
  - (a) The name and address of each agency affected and each agency's file or identification number, if known;
  - (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding, and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
  - (c) A statement of when and how the petitioner received notice of the agency decision;
  - (d) A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief; and
  - (e) A demand for relief.

**SUSPENSION, REVOCATION, ANNULMENT, OR WITHDRAWAL (28-107.04, F.A.C.)**

- (3) Requests for hearing filed in accordance with this rule shall include:
  - (a) The name and address of the party making the request, for purposes of service;
  - (b) A statement that the party is requesting a hearing involving disputed issues of material fact, or a hearing not involving disputed issues of material fact; and
  - (c) A reference to the notice, order to show cause, administrative complaint, or other communication that the party has received from the agency.

**REQUEST FOR REVIEW PURSUANT TO SECTION 373.114 OR 373.217 (42-2.013, F.A.C.)**

(1) In any proceeding arising under Chapter 373, F.S., review by the Florida Land and Water Adjudicatory Commission may be initiated by the Department or a party by filing a request for such review with the Secretary of the Commission and serving a copy on any person named in the rule or order, and on all parties to the proceeding which resulted in the order sought to be reviewed. A certificate of service showing completion of service as required by this subsection shall be a requirement for a determination of sufficiency under Rule 42-2.0132. Failure to file the request with the Commission within the time period provided in Rule 42-2.0132 shall result in dismissal of the request for review.

(2) The request for review shall identify the rule or order requested to be reviewed, the proceeding in which the rule or order was entered and the nature of the rule or order. A copy of the rule or order sought to be reviewed shall be attached. The request for review shall state with particularity.

- (a) How the order or rule conflicts with the requirements, provisions and purposes of Chapter 373, F.S., or rules duly adopted thereunder;
- (b) How the rule or order sought to be reviewed affects the interests of the party seeking review;
- (c) The oral or written statement, sworn or unsworn, which was submitted to the agency concerning the matter to be reviewed and the date and location of the statement, if the individual or entity requesting the review has not participated in a proceeding previously instituted pursuant to Chapter 120, F.S., on the order for which review is sought;
- (d) If review of an order is being sought, whether and how the activity authorized by the order would substantially affect natural resources of statewide or regional significance, or whether the order raises issues of policy, statutory interpretation, or rule interpretation that have regional or statewide significance from a standpoint of agency precedent, and all the factual bases in the record which the petitioner claims support such determination(s); and
- (e) The action requested to be taken by the Commission as a result of the review, whether to rescind or modify the order, or remand the proceeding to the water management district for further action, or to require the water management district to initiate rulemaking to adopt, amend or repeal a rule.

#### **EMERGENCY ACTION (28-107.005, F.A.C.)**

(1) If the agency finds that immediate serious danger to the public health, safety, or welfare requires emergency action, the agency shall summarily suspend, limit, or restrict a license.

(2) The 14-day notice requirement of Section 120.569(2)(b), F. S., does not apply and shall not be construed to prevent a hearing at the earliest time practicable upon request of an aggrieved party.

(3) Unless otherwise provided by law, within 20 days after emergency action taken pursuant to paragraph (1) of this rule, the agency shall initiate a formal suspension or revocation proceeding in compliance with Sections 120.569, 120.57. and 120.60, F.S.

#### **EMERGENCY ACTION (40E-1.611, F.A.C.)**

(1) An emergency exists when immediate action is necessary to protect public health, safety or welfare; the health of animals, fish or aquatic life; the works of the District; a public water supply, or recreational, commercial, industrial, agricultural or other reasonable uses of land and water resources.

(2) The Executive Director may employ the resources of the District to take whatever remedial action necessary to alleviate the emergency condition without the issuance of an emergency order, or in the event an emergency order has been issued, after the expiration of the requisite time for compliance with that order.



DONE and ORDERED this \_\_\_\_\_ day of January, 2001, at West Palm  
Beach, Palm Beach County, Florida,

SOUTH FLORIDA WATER  
MANAGEMENT DISTRICT

BY: \_\_\_\_\_  
MICHAEL COLLINS, Chairman

ATTEST:

\_\_\_\_\_  
Secretary

FILED WITH THE CLERK OF THE SOUTH  
FLORIDA WATER MANAGEMENT DISTRICT

ON: \_\_\_\_\_

BY: \_\_\_\_\_

LEGAL FORM APPROVED

BY: \_\_\_\_\_

## EXHIBIT B

### **40E-21.531 Phase II Severe Water Shortage.**

The following restrictions shall apply when a Phase II water shortage is declared by the District.

#### **(1) Essential/Domestic/Utility/Commercial**

##### **(a) Essential Use**

1. The use of water for firefighting, safety, sanitation, health and medical purposes and other essential uses shall not be restricted.
2. Fire hydrant flushing shall be undertaken only on an emergency basis.
3. Sanitary sewer line flushing and testing shall not be restricted except on a voluntary basis.

##### **(b) Domestic Type Use**

1. Residential type domestic use shall be voluntarily reduced to 50 gallons per person per day.
2. Domestic type use in industrial and commercial establishments shall be voluntarily reduced.

##### **(c) Water Utility Use**

1. Initial pressure at the point of use (meter) shall be reduced to levels no greater than 45 pounds per square inch. Upon reduction of pressure, the utility shall notify the appropriate fire-fighting agencies and make arrangements for direct communication when additional pressure is required.
2. New water line flushing and disinfection shall be restricted to the hours of 7:00 P.M. to 7:00 A.M. seven days per week.
3. As may be appropriate the utility shall institute additional voluntary conservation measures such as reclaiming of backwash water, improving and accelerating leak detection surveys and repair programs, installing and calibrating meters, and stabilizing and equalizing system pressures.

##### **(d) Power Production Use**

Water used for power production shall be voluntarily reduced.

##### **(e) Commercial and Industrial Process Use**

1. Commercial car washes shall be restricted as follows:
  - a. for washes servicing passenger vehicles and mobile equipment weighing less than 10,000 pounds,
    - i. use in excess of 75 gallons per wash shall be prohibited and
    - ii. use equal to or less than 75 gallons per wash shall be voluntarily reduced;
  - b. for washes servicing mobile equipment weighing 10,000 pounds or more,
    - i. use in excess of 150 gallons per wash shall be prohibited and
    - ii. use equal to or less than 150 gallons per wash shall be voluntarily reduced.
2. Water used for commercial and industrial processes shall be voluntarily reduced.
3. Water use for cleaning, adjusting and repair of irrigation systems by a licensed person or entity shall be restricted as follows:
  - a. projects one irrigated acre or greater in size shall be limited to one hour per acre per week,
  - b. projects less than one irrigated acre in size shall be limited to 10 minutes per zone per week.

4. Water use for pesticide application under the supervision of a licensed pest control operator shall be voluntarily reduced.

Under the provisions of this subparagraph, the applicator must be on the premises when water is applied outside of the hours allowed for irrigation.

5. Water use for well development under the supervision of a licensed well contractor shall be voluntarily reduced.

6. Water use for mobile equipment washing by a licensed person or entity shall be voluntarily reduced.

(f) Diversion and Impoundment into Non-District Facilities

1. Water used for diversion and impoundment into non-District facilities shall be voluntarily reduced.

(2) Agriculture

(a) Agricultural Use

1. Overhead irrigation shall be restricted to the hours of 2:00 P.M. to 10:00 A.M.

2. Low volume irrigation hours shall not be restricted.

3. All irrigation systems shall be operated in a manner that will maximize the percentage of water withdrawn and held which is placed in the root zone of the crop and will minimize the amount of water which is withdrawn and released or lost to the user but is not immediately available for other users.

4. Users having access to more than one source class shall maximize the use of the lesser or least restricted source class.

5. Overhead irrigation for field grown citrus nursery stock moisture stress reduction shall be allowed daily for 10 minutes per irrigation zone from 11:30 A.M. to 12:00 P.M. and from 1:30 P.M. to 2:00 P.M.

(b) Livestock Use

Livestock water use shall be voluntarily reduced.

(c) Aquacultural Use

Aquacultural water use shall be voluntarily reduced.

(d) Soil Flooding

1. Soil flooding for vegetable seed planting, rice planting, burning of sugarcane prior to harvest and to permit harvesting of sod shall be voluntarily reduced.

2. Soil flooding for all other purposes shall be prohibited.

(e) Freeze Protection

Water use for freeze protection shall be restricted to situations in which official weather forecasting services predict temperatures likely to cause permanent damage to crops.

(3) Nursery/Urban Irrigation/Recreation

(a) Nursery Use

1. Low volume irrigation uses and low volume hand watering shall be voluntarily reduced.

2. Overhead irrigation uses shall be restricted as follows:

a. inside – 8:00 A.M. to 8:00 P.M., seven days per week.

b. outside – 7:00 P.M. to 7:00 A.M., on odd numbered days.

c. Outside overhead irrigation for containerized nursery stock moisture stress reduction on stock grown in containers up to and including one gallon in size shall be allowed daily for 10 minutes per irrigation zone from 11:30 A.M. to 12:00 P.M., 1:30 P.M. to 2:00 P.M. and 3:30 P.M. to 4:00 P.M.

3. Flood irrigation systems shall be restricted to 6 days per month.

(b) Landscape Irrigation – New Installation

1. For installations which have been in place for less than 30 days and

a. less than 5 irrigated acres in size, water use for irrigation shall be restricted to the hours of 2:00 A.M. to 8:00 A.M., Monday, Wednesday, Thursday and Friday,

b. 5 irrigated acres or greater in size, water use for irrigation shall be restricted to the hours of 12:01 A.M. to 8:00 A.M. Monday, Wednesday, Thursday and Friday.

2. Low volume irrigation and low volume hand watering of new landscaping shall be voluntarily reduced.

3. Cleaning and adjusting of new irrigation systems shall be restricted to 10 minutes per zone on a one time basis.

(c) Landscape Irrigation – Existing Installation

1. For existing installations less than 5 irrigated acres in size, water use for irrigation shall be restricted to the hours from 4:00 A.M. to 8:00 A.M. for all types of irrigation, except low volume irrigation, and 5:00 P.M. to 7:00 P.M. for low volume hand watering, two days per week.

a. Installations with odd addresses shall be permitted to irrigate on Wednesday and Saturday.

b. Installations with even addresses or no address shall be permitted to irrigate on Thursday and Sunday.

2. For existing installations 5 irrigated acres or greater in size, water use for irrigation shall be restricted to the hours from 12:01 A.M. to 8:00 A.M., two days per week.

a. Installations with odd addresses shall be permitted to irrigate on Wednesday and Saturday.

b. Installations with even addresses or no address shall be permitted to irrigate on Thursday and Sunday.

3. Water use for cleaning, adjusting and repair of existing irrigation systems shall be limited to ten minutes per zone per week.

4. Low volume irrigation uses shall be voluntarily reduced.

(d) Recreation Area Use

1. Landscape irrigation for new and existing recreation areas shall be restricted to the hours prescribed for new and existing landscape irrigation in paragraphs (b) and (c) respectively.

2. Irrigation of seeded and/or sprigged recreation areas that have been in place for less than thirty days shall be allowed daily for 5 minutes per irrigation zone from 11:30 A.M. to 12:00 P.M., 1:30 P.M. to 2:00 P.M. and 3:30 P.M. to 4:00 P.M.

3. Watering of pervious non-vegetated recreational/sporting surfaces shall be restricted to ten minutes of application prior to each recreational/sporting event. Low volume watering shall be used.

(e) Golf Course Use

1. Irrigation of greens and tees shall be voluntarily reduced and shall be accomplished during non-daylight hours.

2. Irrigation of fairways, roughs and nonplaying areas on the first nine holes of the course shall be restricted to the hours of 12:01 A.M. to 8:00 A.M. on Wednesday and Saturday.

3. Irrigation of fairways, roughs and nonplaying areas on the last nine holes of the course shall be restricted to the hours of 12:01 A.M. to 8:00 A.M. on Thursday and Sunday.

4. Irrigation of seeded and/or sprigged areas that have been in place for less than thirty days shall be allowed daily for 5 minutes per irrigation zone from 11:30 A.M. to 12:00 P.M., 1:30 P.M. to 2:00 P.M. and 3:30 P.M. to 4:00 P.M.

(f) Water Based Recreation Use

1. Water based recreation water use shall be voluntarily reduced.

2. Draining of facilities into sewers or onto impervious surfaces shall be prohibited.

3. Existing facilities shall not be refilled except for makeup water, unless the facility is leaking more than one inch of water a day. If a facility is leaking more than one inch of water a day and is in need of repair, it may be drained onto a pervious surface for repairs and subsequently refilled.

(4) Miscellaneous

(a) Cooling and Air Conditioning Use

The use of water for cooling and air conditioning shall be restricted to that amount of water necessary to maintain a minimum temperature of 78 degrees Fahrenheit.

(b) Dewatering Use

Discharge of fresh water to tide from dewatering shall be prohibited.

(c) Navigation Use

1. The District shall request the U. S. Army Corps of Engineers to restrict its lockages to maintain acceptable chloride concentrations upstream of the locks and to conserve water.

2. In the case of the Franklin Lock and Dam, the District shall request the U. S. Army Corps of Engineers to restrict lockages to once every four hours if:

a. chloride levels upstream of S-79 are 180 parts per million or higher and

b. a rainfall in excess of one inch in 24 hours is not predicted in the surface water use basin within the next 48 hours.

3. If the restrictions imposed in subparagraph 2. are insufficient to stop the rising chloride levels, the District shall request the U. S. Army Corps of Engineers to further restrict lockages to once every four hours, twice per week.

4. If the restrictions imposed in subparagraphs 2. and 3. are still insufficient to stop the rising chloride levels, the District shall request the U. S. Army Corps of Engineers to prohibit lockages.

(d) Other Outside Uses

1. Washing or cleaning streets, driveways, sidewalks, or other impervious areas with water shall be prohibited.

2. Outside pressure cleaning shall be restricted to only low volume pressure cleaning, seven days a week.

3. Mobile equipment washing with water shall be restricted to the hours and days prescribed for existing landscape irrigation in paragraph (3)(c)1., using only low volume mobile equipment washing methods and shall be conducted over a pervious surface or in an area that immediately drains to a pervious surface. Rinsing and flushing of boats after saltwater use shall be limited to 15 minutes once a day for each boat.

4. Washing boats that serve as a primary residence shall be restricted to the hours and days prescribed for existing landscape irrigation in paragraph (3)(c)1. Boats with an odd

slip number shall be permitted to be washed on Wednesday and Saturday. Boats with an even slip number or no slip number shall be permitted to be washed on Thursday and Sunday.

(e) Aesthetic Use

1. Non-recirculating outside aesthetic uses of water shall be prohibited.
2. Water use for outside aesthetic purposes by facilities that recirculate water shall be voluntarily reduced and must meet the following criteria:
  - a. Draining of water from outside aesthetic facilities into sewers or onto impervious surfaces is prohibited.
  - b. Outside aesthetic facilities shall not be operated when wind conditions cause water to be lost from the recirculating capacity of the facility.
  - c. Outside aesthetic facilities that leak water shall not be operated.
  - d. Outside aesthetic facilities that lose water due to an overflow shall not be operated.
3. Inside aesthetic uses of water shall be voluntarily reduced.

*Specific Authority 373.044, 373.113 FS. Law Implemented 373.175, 373.246 FS.*

*History—New 5-31-82, Amended 1-26-86, 2-14-91.*